IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

OP.No. 20248 of 1998(I)

PETITIONER:

T.C.LEKSHMY,
SPECIAL GRADE SECRETARY,
ADAT GRAMA PANCHAYATH,
P.O. PURANATTUKARA, THRISSUR.

BY ADV. SRI.N.P.SAMUEL
SRI.B.K.PURUSHOTHAMAN

RESPONDENTS:
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1. STATE OF KERALA,
REPRESENTED BY THE SECRETARY TO GOVT.,
LOCAL ADMINISTRATION DEPARTMENT,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DIRECTOR OF PANCHAYATHS,
THIRUVANANTHAPURAM.

3. K.G.KAMALASANAN, SENIOR SUPERINTENDENT,
DISTRICT PANCHAYAT OFFICE, THRISSUR.

4. K.DANANJAYAN, SENIOR SUPERINTENDENT,
OFFICE OF THE DEPUTY DIRECTOR OF PANCHAYATS,
KASARAGOD.

5. P.SOMASUNDARAM,
SENIOR SUPERINTENDENT,
DISTRICT PANCHAYAT OFFICE,
MALAPPURAM.

BY ADV. SRI.M.V.BOSE
ADV. SHRI.SMITHA SUKUMAR, GOVERNMENT PLEADER

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

OP 20248/1998

ORDER ON C.M.P. NO. 35714/1998 IN O.P. NO. 20248/1998 ,
C.M.P. NO. 51691/1999 IN O.P. NO. 20248/1998
&
C.M.P. NO. 24057/2000 IN O.P. NO. 20248/1998

DISMISSED.

05/11/2007 SD/-(THOTTATHIL B.RADHAKRISHNAN, JUDGE)

APPENDIX

PETITIONER'S EXHIBITS

P1 : COPY OF EXTRACT OF SENIORITY LIST OF U.D.CLERKS AS ON 01/07/78 ISSUED BY R2.

P2 : COPY OF EXTRACT OF SENIORITY LIST OF SPEL. GRADE EXECUTIVE OFFICER AS ON 01/04/1990 ISSUED BY R2.

P3 : COPY OF EXTRACT OF DRAFT SENIORITY LIST OF U.D.CLERKS AS ON 01/01/93 ISSUED BY R2.

P4 : COPY OF ORDER NO.S.20330/93 DATED 24/06/93 WITH EXTRACT COPY OF SENIORITY LIST OF SPL. GRADE EXECUTIVE OFFICERS AS ON 01/04/90.

P5 : COPY OF OBJECTION FILED BY PETITIONER BEFORE R2 ON 10/05/94.

P6 : COPY OF ORDER NO.S.23222/97 DATED 26/08/97 WITH EXTRACT COPY OF SENIORITY LIST OF SPEL. GRADE EXECUTIVE OFFICERS AS ON 01/01/1990 TO 13/11/96 ISSUED BY R2.

P7 : COPY OF OBJECTION FILED BY PETITIONER BEFORE R2 ON 17/10/97.

P8 : COPY OF OBJECTION FILED BY PETITIONER BEFORE R2 ON 10/07/1998.

P9 : COPY OF ORDER NO. E11-1/98 DATED 09/07/1998 ISSUED BY R2.

P10 : COPY OF ORDER NO. S.37141/97 DATED 20/10/1998 ISSUED BY R2.

// TRUE COPY //

PA TO JUDGE.

jg

THOTTATHIL B.RADHAKRISHNAN, J.

O.P. No.20248 of 1998

Dated, this the 5th day of November, 2007

J U D G M E N T

Pursuant to the directions issued by this Court in O.P.No.11812/91, the cadre strength of lower division clerks and upper division clerks in the department of Panchayat was refixed with retrospective effect from 19/12/77 and 48 posts of upper division clerks were created as on 14/11/1977 and the entire promotions were reviewed as per order dated 24/06/1992.

2. It was noticed that as on the date of creation of the posts of upper division clerks, i.e., on 14/11/1977, the petitioner was not test qualified for such promotion though she had appeared for the departmental test conducted by the Public Service Commission during October 1977, the results of which were declared only on 19/12/1977. As on 14/11/1977, the date of creation of additional posts of upper division clerks, there were juniors to the petitioner in the lower division clerks cadre who were test qualified. They were accordingly promoted and placed above the petitioner in the review order.

3. Though the review order was issued only in 1992, the position and the dispute has to be decided with reference to the relevant date, 14/11/1977, the date of creation of additional posts of upper division clerks. If that be so, as on that date, the petitioner was not test qualified and there were juniors who were admittedly test qualified.

4. The contention of the petitioner based on Rule 28 (b)(b)(b) of Part II KS & SSR, that having succeeded in the departmental test, the date of acquisition of the departmental test qualification should be the last date of the examination would not save the petitioner's case, because that would only enable the petitioner to gain a vacancy which remains unfilled in the absence of any other qualified person, being available. There could also be no restoration of seniority in the upper division clerk cadre on any ground referable to Rule 27, Part II of KS & SSR.

For the aforesaid reasons, this writ petition fails and the same is accordingly dismissed. No costs.

Sd/-

(THOTTATHIL B.RADHAKRISHNAN, JUDGE.)

jg